

**VIRGINIA BOARD OF DENTISTRY
MINUTES
MARCH 13, 2009**

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:07 A.M. on March 13, 2009 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Meera A. Gokli, D.D.S., President

**BOARD MEMBERS
PRESENT:**

Jeffrey Levin, D.D.S., Vice-President
Jacqueline G. Pace, R.D.H., Secretary-Treasurer
Robert B. Hall, Jr. D.D.S.
Myra Howard
Misty Mesimer, R.D.H.
Augustus A. Petticolas, Jr. D.D.S.
Darryl J. Pirok, D.D.S.
James D. Watkins, D.D.S.
Paul N. Zimmet, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director for the Board
Sandra Whitley-Ryals, Director for the Agency
Elaine Yeatts, Senior Policy Analyst
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General

**ESTABLISHMENT OF
A QUORUM:**

All members of the Board were present.

PUBLIC COMMENT:

Marge Green, R.D.H., of the Virginia Dental Hygienists' Association (VDHA) advised that the VDHA supports the elimination of restrictions on the number of dental hygienists allowed per dentist to address access to care. She stated that there is no proof that such restrictions serve the public. She provided a copy of the VDHA policy.

Ralph L. Howell, D.D.S., president of the Virginia Dental Association (VDA), asked on behalf of the VDA that the Board:

- determine if bleaching clinics are practicing dentistry noting that recently Alabama and other states have ruled that bleaching clinics are the practice of dentistry.
- collect information annually with renewals about where licensees practice and how many days they work as a practical way to collect information needed to address access to care.
- maintain the limit of 2 dental hygienists per dentist to preserve quality of care.

- allow dental assistants to get education for expanded functions on a part time basis as proposed by the VCU School of Dentistry so they are able to work at the same time.
- be aware that mobile dental clinics “cherry pick” the procedures they offer and do not address the need for complete or continuing care.
- provide an easy to understand source of information on practice requirements such as an “idiot’s guide to dentistry” noting that new licensees are reporting they are having a hard time getting answers from the Board.
- screen out complaints that are being made because a lawyer recommended the complaint as a strategy to have the Board do the investigation, the results of which are then used in civil court.

Dr. Howell thanked the board members for the hard work they are doing.

APPROVAL OF MINUTES:

Dr. Gokli asked if the Board members had reviewed the minutes in the agenda package. Ms. Pace moved to accept the minutes of the December 11, 2008 meeting. The motion was seconded and carried.

Ms. Pace moved to accept the minutes of the December 12, 2008 meeting. The motion was seconded and carried. Dr. Watkins asked that the minutes be amended on page 6 in Enforcement Discussion to read “reproduction of x-rays” instead of “production of x-rays.” Dr. Gokli agreed to the change.

DHP DIRECTOR’S REPORT:

DHP Performs. Ms. Ryals reviewed the last quarter’s results for the agency and the boards of Nursing, Medicine and Dentistry to show the progress being made on the 250 day goal for case resolution. She applauded the Board for its work on:

- reducing the backlog and achieving a 169% clearance rate which is well above the goal of 100%, and
- reducing the percentage of old cases to 33% which is still above the goal of 25%.

She commented that the Board’s outcomes on these measures are going in the right direction. She then expressed concern about the percentage of cases being closed within 250 closing being only 67% with the Board moving away from the goal of 90% and the importance of clearing all old cases. She also noted that the Board exceeded the goals for processing applications and in customer satisfaction.

Dr. Zimmet asked about the concerns received from the customer satisfaction surveys. Ms. Ryals stated that information has not been developed and that work is underway to improve the survey and to have it completed online.

Legislation. Ms. Ryals reported that four agency bills passed this year:

- House Bill 2405 on the Healthcare Workforce was in the Governor's package and it allows the release of information for determining where shortages exist.
- House Bill 2405 on the Confidentiality of Investigations permits the sharing of information about complaints.
- House Bill 2211 on the Prescription Monitoring Program allows prescribers to post notice rather than obtain consent and permits agreements for sharing information with other states.
- House Bill 2407 on the Health Practitioners' Intervention Program changes the name of the program and clarifies that the purpose of the program is monitoring.

Ms. Ryals expressed her appreciation for the work of the VDA and VDHA during the General Assembly. She advised that the VDA had House Bill 2058 introduced which allows the Board of Dentistry to recover costs for monitoring licensees' compliance with disciplinary orders. Ms. Ryals stated that the Board will be the forerunner for recovering such costs and that the agency has begun work on implementing this bill. Ms. Yeatts commented that the Board will need to act on implementation and suggested that it should be assigned to a committee other than the Regulatory-Legislative Committee. Dr. Zimmet moved that it be referred to the Executive Committee. Dr. Gokli agreed to the suggestion.

Ms. Yeatts completed the report on the 2009 General Assembly by reporting that:

- House Bill 2180 allows dental hygienists employed by the Virginia Department of Health to provide educational and preventative dental care in Virginia Dental Health Profession Shortage Areas.
- House Bill 2453 directs the Department of Medical Assistance Services to develop programs and incentives to encourage the adoption of electronic prescribing by Medicaid providers.
- Senate Bill 1282 permits licensees to have an address of record and an address for release to the public.

REPORTS:

Board of Health Professions (BHP), Dr. Gokli said she had no report because the BHP has not met since the last board meeting.

Executive Committee Meeting. Dr. Gokli reported that the Executive Committee met this morning and addressed:

- Adding a Code of Conduct to the Board's bylaws which will be presented to the Board in June.
- Adopting a Professional Code of Conduct for licensees which is still in the drafting stage.
- Issuing periodic reports prepared by the secretary-treasurer and executive director which lists recent Board actions for licensees and refers them to the web page for information.
- Requiring through the regulatory review process that licensees to take the Dental Law Examination once every five years and receive 3 hours of credit for continuing education.

Regulatory/Legislative Committee. Dr. Watkins asked if there were any questions about the information in the February 25, 2009 Draft Minutes of the Committee meeting. He reported that work on the regulations for dental assistants II and regulatory review is still in progress and the next Committee meeting will be April 22, 2009.

SRTA. Dr. Watkins deferred to Dr. Pirok for this report. Dr. Pirok thanked the Board for sending him to the SRTA Strategic Planning Meeting in Charleston, West Virginia and urged all Board members to become examiners. He reported that 26 states accept the SRTA exam and that SRTA is working to expand the number of examination sites and the number of students taking the exam. He noted that the meeting focused on a SWOT (Strength, Weakness, Opportunity, Threat) analysis and that the concerns addressed included access, safety and manpower. He handed out copies of examiner assignments and a reading list.

Southern Conference of Deans and Dental Examiners. Dr. Pirok reported that attendance was scattered with eight schools participating. He indicated that usage of drugs in dental practices was addressed and gave out copies of the agenda.

CODA UVA Site Visit. Dr. Pirok praised the program and staff at UVA for doing a wonderful job. He reviewed the mission of the Commission, urged Board members to participate in a site visit then distributed materials for review.

LEGISLATIVE AND REGULATION:

Administration by Dental Hygienists. Ms. Yeatts advised that item #3 of the Regulations on Nondelegable Duties needs to be amended to conform with the statutory change that permits dental hygienists to administer Schedule VI local anesthesia to patients 18 years of age and older. She noted this action is exempt from the standard regulatory process. Dr. Levin made the motion to amend item # 3 as proposed. The motion was seconded and passed.

Address of Record. Ms. Yeatts asked the Board to adopt another exempt action, this one to amend 18VAC60-20-16 to conform to the provisions of SB 1282 which allows an address of record to be confidential if the licensee provides an address for public information. Dr. Levin move to accept the proposed amendment. The motion was seconded and passed.

Petition for Rule-making – Alden S. Anderson III. Ms. Yeatts asked the Board to either accept or reject the petitioner's request to include the Roanoke Valley Dental Society in the list of approved sponsors for continuing education programs in 15VAC60-20-50. Discussion followed about the sponsors accepted by the Board and about the number of unaffiliated dental societies and study groups in existence. Dr. Zimmet moved to deny the petition due to the availability or other avenues for qualifying. The motion was seconded and passed.

Petition for Rule-making by Len Futerman, DDS. Ms. Yeatts stated that the request is to amend regulations for anesthesia in dental offices for consistency with guidelines of the American Dental Association, as amended in October of 2007. Ms. Yeatts noted that this was provided as information, the comment period is open until April 15, 2009 and the Board will need to act on the petition at its June meeting.

Mobile Dental Clinics Budget Amendment. Ms. Yeatts commented that the budget bill supersedes all other law and has yet to be signed by the Governor. This item in the bill allows the Board to implement regulations governing the operations of mobile dental clinics and the registration of such clinics. Ms. Yeatts advised that the regulations must be in effect within 280 days of enactment and that staff will draft proposed language for the April 22, 2009 Regulatory/Legislative Committee meeting. She also noted that the regulations would only be in force for the life of the Budget unless further legislative action is taken.

BOARD

DISCUSSION/ACTION: **CODA Notice to VCU.** Dr. Gokli advised that the letter was provided as information only.

Priority for AADE. Dr. Gokli asked if the Board needs to send a letter to AADE supporting action toward a uniform national clinical licensure examination. Ms. Reen said that a letter may not be necessary but that it would assist Dr. Gokli at the upcoming AADE meeting to have a clear statement of the Board's position on having a national exam and how to get there. Dr. Watkins suggested that other boards should be encouraged to accept all the regional examinations and that the AADE should focus on development of a national examination. This suggestion was agreed to by consensus.

Letter from Mr. Braatz. Ms. Reen advised this information was related to achieving a national exam.

ADEX Correspondence. Dr. Gokli advised that this material was provided as information only.

CRDTS Correspondence. Dr. Gokli advised that this material was provided as information only.

Digital Impression Technology – Dr. Gokli asked if action was needed. Ms. Reen replied that we receive questions about technology so it would help to have an answer. There was discussion with differing opinions about whether taking images for an impression is taking an impression or taking a photograph. Dr. Levin suggested that an Ad Hoc Technology Committee be formed to address this and the use of lasers, digital imaging and other technologies. Dr. Gokli asked who would like to be on the Committee. Dr. Levin, Dr. Pirok and Ms. Mesimer volunteered. Dr. Gokli asked Dr. Levin to serve as chair.

Thank you email. Dr. Gokli and several members indicated that it was nice to receive positive feedback.

Acupuncture. Ms. Reen indicated that her initial response will be that practice in the military is exempt from the laws and regulations governing practice in Virginia but that it would be helpful to have guidance from the Board on the subject. Dr. Gokli indicated that this is accepted treatment throughout the world which is coming to the US. Ms. Yeatts stated that it is unlawful to practice acupuncture without a license from the Board of Medicine. Mr. Casway advised that the Board decides if and when acupuncture can be used in dentistry. Ms. Mesimer asked if this was really a question of allowing the use of a new modality of treatment. Dr. Pirok recommended that this issue be referred to the Ad Hoc Committee for further study. Dr. Gokli agreed.

**REPORT ON CASE
ACTIVITY:**

Mr. Heaberlin reviewed the report he distributed addressing the status of the 173 open cases as of March 12, 2009. He indicated that 14 of the 44 cases older than 365 days are on one respondent and these cases will be heard in May. Ms. Ryals commented on the importance of moving both old and new cases to achieve the performance goal. Ms. Reen suggested that using agency subordinates is an area that may need to be revisited. Mr. Heaberlin reminded members that the probable cause decisions should provide a detailed description of the problems to be addressed in a notice. Dr. Zimmet asked if staff would resume sending the monthly committee reports that stopped when Cheri left. Ms. Reen agreed to have the reports sent monthly. Ms. Mesimer and Dr. Hall indicated that they would like to try reviewing cases online. Ms. Reen cautioned members not to email reports with identifying information such as the respondent's name. Questions were raised about whether this restriction was necessary and she agreed to check on this further.

**EXECUTIVE
DIRECTOR'S
REPORT/BUSINESS:**

OMS Quality Assurance Review. Ms. Reen reported that the Board did engage an oral maxillofacial surgeon from Florida to assist with the Quality Assurance Reviews of cosmetic procedures. She stated that Dr. Fattahi has already submitted two reports and that she is working with Enforcement to gather diagnostic quality images of patients to facilitate the reviews.

**BOARD COUNSEL
REPORT:**

Mr. Casway asked for a closed session to address litigation brought by Dr. Leidy in Virginia Beach Circuit Court.

Closed Meeting: Dr. Levin moved that the Board convene a closed meeting pursuant to § 2.2-3711.A(7) of the Code of Virginia for consultation with legal counsel. Additionally, Dr. Levin moved that Board staff, Sandra Reen and Huong Vu, and board counsel, Howard Casway, attend the closed meeting because their presence in the

closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene: Dr. Levin moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Gokli announced that no action was taken during the closed session.

ADJOURNMENT: With all business concluded, the meeting was adjourned at 1:25 p.m.

Meera A. Gokli, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date